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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,564	04/19/2004	Richard Thiele JR.	THL-10002/29	3187
25006	7590	01/17/2008	EXAMINER	
GIFFORD, KRASS, SPRINKLE, ANDERSON & CITKOWSKI, P.C.			KRAMER, DEAN J	
PO BOX 7021			ART UNIT	PAPER NUMBER
TROY, MI 48007-7021			3652	
MAIL DATE		DELIVERY MODE		
01/17/2008		PAPER		

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

MAILED

Application Number: 10/827,564

Filing Date: April 19, 2004

Appellant(s): THIELE, RICHARD

JAN 17 2008

GROUP 3600

John G. Posa
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 6, 2007 appealing from the Office action mailed September 27, 2007.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

342,961	Hicks	6-1886
D308,004	Dawley et al.	5-1990

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2,787,058	Vogel	4-1957
2,782,615	Johnson	2-1957

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

Claims 2-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The preambles of dependent claims 2-12 are not consistent with the preamble of independent claim 1 from which the dependent claims ultimately depend.

In claim 5, line 2, the phrase "the spaced are apart" is not clearly understood.

Claim Rejections - 35 USC § 103

Claims 1-7 and 9-12, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Hicks (342,961) in view of either Dawley et al. (Des. 308,004) or Vogel (2,787,058).

Hicks shows a shovel comprising a wooden scoop portion and a metallic leading cutting edge portion. While the leading cutting edge defines angular notches, it does not define circular segments that intersect at distinct points as is called for in the above claims of the instant application.

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However, both Dawley et al. and Vogel show garden tools having scalloped cutting edges in the shape of circular segments intersecting at pointed tips.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the serrated cutting edge of the Hicks shovel with a circular segmented cutting edge similar to that shown in either the Dawley et al. or Vogel patent as an alternative yet functionally equivalent cutting edge that could better penetrate through ice or snow due to the pointed tips located between adjacent circular segments.

Regarding claims 2-5, it would have been obvious to a person having ordinary skill in the art to dimension the resulting circular segments to various sizes and quantity depending on the desired task at hand.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hicks in view of either Dawley et al. or Vogel as applied to claims 1-7 and 9-12 above, and further in view of Johnson (2,782,615).

Johnson shows a scoop having reinforcing ribs (2a) along the bottom of its scoop blade.

It would have been obvious to one of ordinary skill in the art to provide reinforcing ribs along the bottom surface of the modified Hick shovel blade, as was presented above, as taught by Johnson in order to strengthen the resulting blade so that it could handle heavier loads.

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(10) Response to Argument

The claimed invention is directed to a shovel blade having a plurality of circular scallops along a leading edge thereof. These "scallops" are formed as individual circular segments having intersecting forward points that lie in a common line oriented generally perpendicular to the shovel's handle.

Hicks (342,961) shows a shovel blade having a plurality of angular notches along its front edge extending along a common axis perpendicularly to the axis of the shovel handle. The notches shown in Figures 1 and 3 of the Hicks patent appear to have straight sides rather than arcuate or circular segments. Also, the Hicks notches terminate in flattened tips rather than "distinct forward points" as is called for in the claims of the instant application.

However, both Dawley et al. (Design Pat. 308,004) and Vogel (2,787,058) show garden tools comprising a flat blade portion with at least one edge of the blade having a plurality of concave scallops intersecting at distinct sharpened points. This scalloped and pointed design allows the blade to cut through the material being removed.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the concave angled notch strip of Hicks with a strip of scalloped segments intersecting at forward points similar to that shown in either the

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Dawley et al. or Vogel patent. The resulting shovel would penetrate and break apart ice and compacted snow more easily than flattened tips.

Applicant argues that since Hicks discloses and shows only a single angular serrated pattern, then one of ordinary skill in the art would presume that this disclosed pattern would enter and break up snow better than alternate designs. First, it is pointed out that a person of ordinary skill in the art should not be limited to Hicks himself, but rather, to a hypothetical person who is presumed to have known the relevant art at the time of the invention and would be able to fit the teachings of multiple patents together. Thus, when presented with the teachings of Dawley et al. or Vogel, one of ordinary skill in the manual garden tool art would have found it obvious to replace the flattened tips and angular notches of Hicks with a pointed scalloped edge similar to Dawley et al. or Vogel to yield the predictable result of facilitating cutting or penetrating the hardened snow or ice.

Applicant also argues that the Hicks implement does not contain a "scoop". However, by giving the broadest reasonable interpretation to the claims, the flat blade and attached back wall (see Fig. 2) of Hicks can be considered a "scoop portion" (note the terminology used in claim 1 of the instant application) of the overall "snow shovel". A scoop can be any implement that is used to lift, shovel, or scoop loose material such as snow. Since Hicks titles his invention a "snow shovel" and describes it as a tool for handling snow or ice, it is reasonable to interpret the tool as a flattened scoop. Alternatively, even if one defines a scoop as having a bottom and at least three

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surrounding walls, then the bottom of such a scoop is a *portion* of that scoop. The Hicks flat blade is at least similar to this "portion" of such a scoop.

Regarding claims 2-5, it is reiterated that depending on the specific task at hand (e.g. shoveling snow from a small doorstep or large driveway), it would have been obvious to dimension the resulting circular segments to various sizes and quantity to efficiently perform the desired task especially since applicant has not specifically disclosed that these particular dimensions solve any stated problem or are for any critical purpose.

In regard to claim 8, the patent to Johnson (2,782,615) was cited to show a scoop having reinforcing ribs (2a) along its bottom scoop portion (2). Such ribs inherently reinforce or strengthen the bottom portion to prevent it from bending when lifting heavy loads. Thus, it would have been obvious to a person having ordinary skill in the art to provide reinforcing ribs along the scoop portion of the modified Hicks shovel as taught by Johnson in order to similarly strengthen the resulting scoop portion. Any conventional and well known means of attaching (e.g. screwing, nailing, adhesives, integrally forming) could obviously be used to fasten such ribs to the scoop portion.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Dean J. Kramer

Conferees:

Meredith Petravick 

Saul Rodriguez 